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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE PIMA COUNTY MENTAL HEALTH NO. MH 20110065	2 CA-MH 2011-0002 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable Wayne E. Yehling, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Grant Winston
Tucson
Attorneys for Appellee

Ann L. Bowerman
Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 In January 2011, a case manager for COPE Behavioral Health Services filed an application for involuntary evaluation of appellant for a mental health examination pursuant to A.R.S. § 36-520. Several days later, the medical director of the screening agency, Southern Arizona Mental Health Center (SAMHC) Behavioral Health Services, filed a petition for court-ordered evaluation. Thereafter, a petition for court-ordered treatment was filed pursuant to A.R.S. § 36-533, alleging appellant was persistently or acutely disabled, which the trial court granted on February 3, 2011, following a hearing. Appellant appeals from that ruling, challenging the sufficiency of the evidence to support it. Specifically, she contends the evidence was not clear and convincing that she is persistently or acutely disabled, nor did it establish she was unwilling or unable to accept treatment voluntarily. We affirm for the reasons stated below.

¶2 As appellant correctly points out, the evidence supporting an order for involuntary treatment must be clear and convincing. A.R.S. § 36-540(A); *see also In re MH 2007-001236*, 220 Ariz. 160, ¶ 15, 204 P.3d 418, 423 (App. 2008). We will sustain such an order on appeal as long as the factual findings upon which the order is based are not clearly erroneous and are supported by substantial evidence. *See In re MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009); *In re Maricopa County Mental Health No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). We view the evidence, together with all reasonable inferences the evidence permits, in

the light most favorable to affirming the court's ruling. *See MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d at 1163.

¶3 The record establishes that appellant has endured a lengthy history of mental illness and has been receiving behavioral treatment from COPE since 1995. On January 4, 2011, COPE case manager Elizabeth Padawer filed an application for involuntary evaluation, alleging that in the preceding few weeks, appellant had "become increasingly delusional and paranoid." The application and the subsequently filed petition for court-ordered evaluation alleged appellant believed someone was spying on her, had put automobile fluid into the air vents of her home, and was switching around her medications. On January 24, the trial court granted the petition for court-ordered evaluation and ordered that the evaluation be conducted on an in-patient basis.

¶4 Based on the evaluations of two psychiatrists, the COPE medical director filed a petition for court-ordered treatment. In his affidavit and report, which were attached to the petition, Dr. Daniel Fredman noted appellant's history of post-traumatic stress disorder (PTSD) and anxiety, pointed out that she had been receiving treatment through COPE since 1995, and that the case manager alleged she had become increasingly delusional and paranoid in the preceding weeks. He concluded she was persistently or acutely disabled and in need of inpatient treatment. Also attached to the petition was the affidavit and report of Dr. David Stoker. He, too, concluded, for similar reasons, that appellant was persistently or acutely disabled.

¶5 After a hearing on February 3, 2011, at which Fredman, Stoker, case manager Padawar, and Sheryl Svoboda, a mental health clinician from SAMHC testified,

the trial court concluded that clear and convincing evidence established that, as a result of a mental disorder, appellant was persistently or acutely disabled and in need of a period of mental health treatment. The court found appellant was unable or unwilling to comply with such treatment on a voluntary basis. The court ordered that she "receive court-ordered treatment for one year with the ability to be re-hospitalized, should the need arise, in a level one behavioral health facility for a time period not to exceed 180 days." The court approved the submitted treatment plan.

¶6 Appellant contends on appeal there was insufficient evidence to support the court's finding that she was persistently or acutely disabled, as defined by A.R.S. § 36-501(33). She concedes there was evidence she was experiencing paranoid delusions, but argues the evidence did not show there was a "substantial probability" her "judgment, reason, behavior or capacity to recognize reality" were significantly impaired or that these beliefs posed a physical or emotional danger to her. She notes both psychiatrists testified she had denied the allegations she was delusional, as alleged in the petition. She points out she had been able to meet with the mental health care providers even before she had been given anti-psychotic medications and there was evidence, particularly the testimony of the case manager, that she had complied with directives to take medications and did keep appointments to obtain treatment. She also contends the evidence did not satisfy § 36-540(A) because it was not clear and convincing that she was "either unwilling or unable to accept voluntary treatment."

¶7 Stoker testified at the hearing on the petition that he had reviewed appellant's medical chart and the treating physician's notes and had spoken with the

social worker. He evaluated appellant on January 27, 2011, and diagnosed her as suffering from psychotic disorder, not otherwise specified, a serious but treatable mental illness. Fredman, who had spoken to appellant's treating physician, also testified at the hearing and had reached the same conclusion, noting appellant's history of PTSD. Both recommended a combined inpatient and outpatient treatment plan for one year, with medication and case management services. Both responded "yes" when asked whether "there is a substantial probability that" if left untreated, her mental illness "will cause the patient to suffer severe mental, physical or emotional harm."

¶8 Stoker and Fredman described appellant's paranoid delusions, which they had discussed with her. Stoker testified appellant lacked insight into her condition and did not believe she was delusional. Although appellant denied having reported automobile fluid was being leaked into her vents, she did tell Stoker she had smelled something that had made her "pass out," and she had reported someone had been moving her furniture and rearranging her medication. Stoker opined that appellant's illness significantly impairs her judgment, reason, behavior or capacity to recognize reality. He testified she had refused certain medications and was not ready to be discharged from the hospital. He did not believe she would follow through with a treatment plan without the structure of a court order because she was delusional, she did not believe she needed anti-psychotic medications or mood stabilizers, and she had not been cooperative with respect to taking her medication in the past.

¶9 When asked to describe that harm that could result from appellant's mental illness if left untreated, Fredman explained that her treating physician had told him

appellant was exhibiting delusional behavior, adding that if she did not receive proper medication her mental condition was likely to deteriorate and there was a risk she would not be able to care for herself properly, which would cause her to suffer severe mental harm. Like Stoker, he believed her mental illness significantly impairs judgment, reason, behavior or capacity to recognize reality.

¶10 Fredman testified further that he had discussed treatment alternatives with appellant. He stated she had conceded missing appointments previously, but he did not find her explanations reasonable, although he admitted on cross-examination he only knew about one missed appointment. Additionally, he explained that although she denied having reported the behaviors that were regarded as delusional, he believed she was "rationalizing" those delusions. Fredman noted that she had attempted to explain her previous report that someone had been rearranging her medicines by speculating that perhaps she mistakenly had taken the wrong pill.

¶11 Fredman also testified he believed appellant's ability to make an informed decision about her treatment was substantially impaired, explaining he did not believe she would follow through with her treatment and that he did not find credible her explanations for not taking her medication. Nor did he believe she could follow a treatment plan without the structure of a court order, based on the allegations about her behavior and his discussions with her treating physician.

¶12 Thus, contrary to appellant's contention, based on the expert opinion of two psychiatrists, the record contained substantial evidence establishing there was a substantial probability that her judgment, reason, behavior or capacity to recognize reality

were significantly impaired and that her mental illness placed her at risk, both physically and emotionally. That she denied having had delusional thoughts does not, as she suggests, negate these and other findings upon which the trial court based its conclusion that she is persistently or acutely disabled as a result of mental illness.

¶13 The testimony of COPE case manager Padawer and mental health clinician Svoboda provided further support for the trial court's findings, establishing appellant's deteriorating behavior, her need for careful monitoring, and that she either was unwilling or unable to accept voluntary treatment. Padawer, who had been assigned to appellant's case since September 2009, described appellant's deterioration in December 2010 and January 2011, explaining the reports appellant had made to her about the automotive fluid being leaked into her home, describing, generally, appellant's increasingly paranoid and delusional behavior, and her concerns because appellant apparently possessed a firearm. She had asked appellant to come to the clinic to be seen by the nurse practitioner but appellant had said she did not want to leave her home because she was afraid someone would try to break in and that she only left home at night. And, when Padawer told appellant the nurse practitioner wanted to put her on an anti-psychotic medication, appellant responded she did not want to take more medication and would withdraw from COPE. Svoboda, who conducted the pre-screening evaluation, described appellant's paranoid delusions, noting she had been "pressured, rambling, difficult to redirect." She, too, was concerned about appellant's possession of a firearm and her deteriorating condition.

¶14 We decline appellant's implicit request that we reweigh the evidence. *Cf. Jesus M. v. Ariz. Dep't of Econ. Sec*., 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (trial court in best position to observe witnesses, judge their credibility, weigh evidence, and make findings of fact). Rather, it was for the trial court to consider the evidence before it and determine how much weight to give that evidence, taking into consideration the court's assessment of the witnesses' credibility and reliability. *See MH 2007-001236*, 220 Ariz. 160, ¶ 15 & n.17, 204 P.3d at 423 & 429 n.17 (even if physicians disagree trial court may find evidence clear and convincing evidence patient needs court-ordered treatment). Deferring to the court in this respect, as we must, we conclude there was sufficient evidence presented to support its order granting the petition for court-ordered treatment. The court's order therefore is affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge